

**PUBLIC LAW BOARD NO. 5850**

**Award No. 197**  
**Case No. 197**

**(Brotherhood of Maintenance of Way Employees**

**PARTIES TO DISPUTE:**

**(The Burlington Northern Santa Fe Railroad (Former  
(AT&SF Railway Company)**

**STATEMENT OF CLAIM:**

- 1. That the Carrier's decision to issue a Level 1 Record Suspension for ten (10) days to Track Supervisor John R. Banks was unjust.**
- 2. That the Carrier now rescind their decision and expunge all discipline, and transcripts and pay for all wage loss as a result of an investigation held at 10:00 a.m. on January 25, 2002 continuing forward and/or otherwise made whole, because the Carrier did not introduce substantial, credible evidence that proved that the Claimant violated the rules enumerated in their decision, and even if the Claimant violated the rules enumerated in the decision, Record Suspension is extreme and harsh discipline under the circumstances.**
- 3. That the Carrier violated the Agreement particularly but not limited to Rule 13 and Appendix 11, because the Carrier did not introduce substantial, credible evidence that proved the Claimant violated the rules enumerated in their decision.**

**FINDINGS**

**Upon the whole record and all the evidence, the Board finds that the parties herein are carrier and employee within the meaning of the Railway Labor Act, as amended. Further, the Board is duly constituted by Agreement, has jurisdiction of the Parties and of the subject matter, and the Parties to this dispute were given due notice of the hearing thereon.**

**While working Christmas Day in 2001, inspecting track, Claimant and a coworker**

came upon one bolt missing in a crossover plus one more bolt badly bent.

Claimant and his coworker discussed what they needed to do and how they were going to do it. They laid out the necessary tools and the bolts. Claimant got the old bolt out, lined up the holes with a drift pin and was in the process of seating the bolt with the sledgehammer as he could not insert the bolt all the way. While swinging the sledge, he felt it slip some, causing him to hit a washer he had laid out on the tie. The washer ricocheted off either the pandrol plate or the nut then hit his shin with enough force to break his leg plus cutting a gash in it.

Claimant started with the Carrier January 3, 1977, when he was 18 years old. He had several brushes with the disciplinary process (one in 1980, the other 1983), but since that time until the present, he has a clean record.

He was performing a chore his partner says they have done at least a thousand times. The Carrier has not furnished sufficient evidence that Claimant violated any existing Rules. He was using the proper tools, he was standing correctly, and as far as this Board is aware, he was garbed in the required safety gear. The Rules cited are Rules that could be cited any time anyone is injured.

Under the circumstances, the claim will be sustained. All traces of this incident other than the injury itself, are to be removed from Claimant's record, and if he has lost any time, he is to be compensated as provided in the Schedule Agreement.

**AWARD**

**Claim sustained.**

**ORDER**

**This Board, after consideration of the dispute identified above, hereby orders that**

an award favorable to the Claimant(s) be made. The Carrier is ordered to make the award effective on or before 30 days following the date the award is adopted.



Robert L. Hicks, Chairman & Neutral Member



Rick B. Wehrli, Labor Member



Thomas M. Rohling, Carrier Member

Dated: May 29, 2002